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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 587

ETHEL M. BOESE, ET AL.,
Petitioners,

vs.

RANDOLPH-WELLS BUILDING CORPORATION AND LA SALLE NATIONAL BANK,
Respondents.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

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THE BUNTHORP-WARNER PRINTING COMPANY, CHICAGO

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QUESTION PRESENTED.

Since all parties agree that *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306 (1950), controls, the only question really presented* is factual: whether the evidence supports the findings of the district court, affirmed by the court of appeals, that the respondents acted with diligence in complying with the district court's order in preparing, publishing and mailing notice of the hearing on the application for a bar order and in mailing the bar order itself.

* As to questions 2 and 3 in the petition for certiorari (p. 2), see pages 5 and 6, *infra*.

STATEMENT.

Under a 1935 bankruptcy reorganization of City State Safe Deposit Company ("City State"), the corporate predecessor of respondent Randolph-Wells Building Corporation ("Randolph-Wells"), City State securities were made exchangeable in securities of Randolph-Wells. In 1961, after ninety-eight per cent (98%) of the City State securities had been exchanged, Randolph-Wells applied to the district court to reopen the reorganization proceedings for the purpose of limiting the time within which further exchanges could be made (R. 150-155, 159).

The application was personally served on respondent La Salle National Bank ("La Salle"), the successor trustee under the mortgage indenture securing the 1935 Randolph-Wells securities. La Salle opposed the application on behalf of the holders of the unexchanged 1927 City State securities* (R. 165, 166).

By order entered July 17, 1961, the district court set the application for hearing on September 6, 1961, and directed Randolph-Wells (a) to prepare a notice of the hearing in the form prescribed by the court, (b) to publish this notice in journals in Chicago (where Randolph-Wells' property is located) and East St. Louis, Illinois (the seat of the district court) for three successive weeks, and (c) to mail a copy of this notice by registered mail to the last known address of each of the registered owners of City State securities. Randolph-Wells prepared, published and mailed notice in compliance with the order of the district

* In its first opinion, *In re Randolph-Wells Building Corporation*, 197 F. Supp. 327 (E. D. Ill. 1961), the district court held that La Salle, as indenture trustee, had the power and duty to represent the City State security holders so long as the City State securities may validly be presented for exchange. 197 F. Supp. at 332. Quoted in opinion of court of appeals, 332 F. 2d 963, at pages 964, 965.

court. In mailing that notice Randolph-Wells used the list of names and addresses of the owners of City State securities that was maintained by La Salle and its predecessors. This list, which was the only record available, had been compiled pursuant to a bondholders' protective agreement. Thirty-nine such notices were mailed by Randolph-Wells, seventeen were delivered and twenty-two were returned to sender; the evidence shows that those twenty-two had failed to advise the trustee of changes in interests and addresses as required by the bondholders' protective agreement. (Opinion of district court, *In re Randolph-Wells Building Corporation,* 215 F. Supp. 849, 853-855 (E. D. Ill. 1963).)

At the hearing on September 6, 1961 the Court entered an order barring further exchanges after March 6, 1962. On September 8, 1961, La Salle mailed a copy of the bar order by first class mail to the last known address of each of the City State security holders (R. 285, 286).

Five holders surrendered their City State securities before the bar date of March 6, 1962; these were redeemed for cash and Randolph-Wells stock (R. 240).

> The remaining certificate holders, including petitioners and those whom they claim to represent, neither surrendered their securities nor took any steps to redeem them until after the expiration of the bar date. (Opinion of court of appeals 332 F. 2d 963, at page 965.)

On April 25, 1962, after the bar date had passed, the alleged holders of still-unexchanged City State securities petitioned the court to extend the bar date or to set aside the bar order. After a trial on the merits, the district court found the issues and the facts against the petitioners and entered an order dismissing the petition. *In re Randolph-Wells Building Corporation,* 215 F. Supp. 849 (E. D. Ill. 1963). On appeal, this order was affirmed. 332 F. 2d 963 (7 Cir. 1964).

ARGUMENT.

1.

The petition for certiorari presents no legal issue. *Mullane* v. *Central Hanover Bank and Trust Company*, 339 U. S. 306 (1950), is accepted by both courts below and by all parties as fixing the due process requirements of notice. *Mullane* holds that, where trustee and beneficiaries occupy adversary positions and where the names and addresses of the beneficiaries are on the books of the trustee, published notice should be supplemented by at least "ordinary mail to the record addresses"; on the other hand, where the addresses and interests of beneficiaries are unknown to the trustee, published notice is sufficient (339 U. S. 306, 317, 318).

In the case at bar, both the courts below found from the evidence that the Mullane requirements had been met. The findings are that notice was served personally upon the trustee; that the trustee had the power to represent the beneficiaries; that notice was published in appropriate journals and served by registered mail on the security holders at their last known addresses; that the definitive list of names and addresses were those appearing on a registered list compiled pursuant to a bondholder's protective agreement providing for the deposit of City State bonds; that the use of this list complied with the court's order and with the requirements of diligence; that the text of the notice prescribed by the court was adequate.*

* The same persons who received the notice also received a copy of the bar order itself as soon as it was entered. We do not understand how their inaction can be attributed to supposed defects in the notice when they continued not to act after receiving the text of the order defining their rights.

These factual issues, and others, were decided adversely to petitioners by the district court. *In re Randolph-Wells Building Corporation,* 215 F. Supp. 849 (E. D. Ill. 1963). The court of appeals reviewed the evidence and sustained the findings of the district court. *In re Randolph-Wells Building Corporation,* 332 F. 2d 963 (7 Cir. 1964). Petitioners now seek a third review of the same questions of fact.

Even if there were doubt as to the correctness of the findings below, petitioners are not entitled to such a review. The respondents should not be required to participate in yet another hearing on these issues. See *Magnum Import Co.* v. *Coty,* 262 U. S. 159, 1963 (1923); *Rogers* v. *Missouri P. R. Co.,* 352 U. S. 524, 530, separate opinion by Mr. Justice Frankfurter (1957). Also see *Hamilton-Brown Shoe Company* v. *Wolf Bros. & Co.,* 240 U. S. 251, 257, 258 (1916). There is no constitutional issue to be decided here. See *Beck* v. *Washington,* 369 U. S. 541, 554, 555 (1962); *Milwaukee Electric R. & Light Co.* v. *Wisconsin,* 252 U. S. 100, 106 (1920).

2.

What petitioners now call a "jurisdictional" issue (Pet. for Cert., pp. 2, 21-25) is merely a rephrasing of an argument that was not pleaded in the district court and was rejected by the court of appeals on both factual and legal grounds (App. A. to Pet. for Cert., pp. 38-40). The issue is merely whether the district court has correctly interpreted the purpose of a deposit made pursuant to a voluntary reorganization; the court's "jurisdiction" to make this determination is beyond question and has never been challenged.

3.

Petitioners' third point (Pet. for Cert., pp. 2, 25-28) is actually nothing more than a rephrasing of their first point. None of the cases cited resembles the case at bar on the facts.

CONCLUSION.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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